Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

NO.

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In the

Supreme Court of the United States

OCTOBER TERM, 1997

ARTHUR O. ARMSTRONG,
Petitioner,

versus

SCHOOL DISTRICT OF PHILADELPHIA, ET AL.
Respondent

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Arthur O. Armstrong
309 Leland Drive
Greensboro, NC 27455
336-288-9145

****

18 pp

QUESTION PRESENTED FOR REVIEW

Petitions C.A. 96-CV-5740 and C.A. 96-CV-5925 filed in the United States District Court for the Eastern District of Pennsylvania on or about August 25, 1996 are related to the "1997 Actions", but were not pleaded in the 1997 Action petition.

Did the petitioner file the 97-CV-6130 and 97-CV-6178 Actions within the statute of limitations of January 16, 1997?

PARTIES TO PROCEEDING:

Arthur O. Armstrong,
Petitioner,

v.

School District of Philadelphia, et al.
Opponents.

Arthur O. Armstrong,
Petitioner,

v.

Ruth W. Hayre
Constance B. Clayton
Ann G. Waiters
Armita B. Sims
Arlene B. Holtz
Arnold S. Oblon
Albert M. Gentil
Edward Williams
Norris Eldridge
Arlene Robin,
Opponents.

Arthur O. Armstrong
Petitioner,

v.

Ann G. Waiters
Armita B. Sims
Arlene B. Holtz
Arnold S. Olbon
Albert M. Gentil
Edward Williams
Norris Eldridge
Arlene Robin,
Opponents.

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In Pennsylvania, the limitations period for a personal injury action is two years from the date of the offense. See Pa. Cons Stat. Ann. § 5524(7) (1998); Bougher, 882 F.2d at 79. Therefore, the present § 1983 claim is governed by a two-year limitations period.

Statutes:

42 U.S.C. § 1983
42 U.S.C. § 1985(3)

In The
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1997

NO.

ARTHUR O. ARMSTRONG
Petitioner

versus

SCHOOL DISTRICT OF PHILADELPHIA
Respondent

Petition for Writ of Certiorari
To the United States Court of Appeals
For the Third Circuit

Petitioner Arthur O. Armstrong respectfully requests that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit entered on June 2, 1998, on grounds:

1. That on August 25, 1996, petitioner instituted an action in the United States District Court for the Eastern District of Pennsylvania under the caption, **Arthur O. Armstrong v. School District of Philadelphia**, C.A. 96-5740, (hereinafter referred to as the "1996 Action").

2. For the statute of limitations purpose, only, petitioner will refer to this case as the "1996 Action".

3. On January 16, 1995, Respondent denied Petitioner reinstatement to his original teaching position without Due Process of law.

Arthur O. Armstrong

Arthur O. Armstrong, Petitioner

In The
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1997

NO. _____

ARTHUR O. ARMSTRONG
Petitioner

versus

RUTH W. HAYRE, CONSTANCE B. CLAYTON, ANN G. WAITERS, ARMITA B. SIMS, ARLENE B. HOLTZ, ARNOLD S. OBLON, ALBERT M. GENTIL, EDWARD WILLIAMS, NORRIS ELDRIDGE ARLENE ROBIN
Respondents

1. That on or about August 25, 1996, the petitioner instituted an action in the United States District Court for the Eastern District of Pennsylvania under the caption: Arthur O. Armstrong v. Ruth W. Hayre, et al. C.A. 96-CV-5925, (hereinafter referred to as the **"1996 Action").**

2. For the statute of limitations purpose, only, petitioner will refer to this case as the "1996 Action".

3. That on or about January 16, 1995, the petitioner was denied reinstatement to his original teaching position by conspiratorial action of the Respondents

Arthur O. Armstrong

Arthur O. Armstrong, Petitioner

In The
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1997

NO.

ARTHUR O. ARMSTRONG
Petitioner

versus

ANN G. WAITERS, ARMITA B. SIMS, ARLENE B. HOLTZ, ARNOLD S. OBLON, ALBERT M. GENTIL, EDWARD WILLIAMS, NORRIS ELDRIDGE, ARLENE ROBIN
Respondents

1. That on or about August 25, 1996, the petitioner instituted an action in the United States District Court for the Eastern District of Pennsylvania under the caption: Arthur O. Armstrong v. Ann G. Waiters, et al. C.A. 96-CV-5925, (hereinafter referred to as the "1996 Action").

2. For the statute of limitations purpose, only, petitioner will refer to this case as the "1996 Action".

3. That on or about January 16, 1995, the Respondents denied Petitioner reinstatement to his original teaching position in violation of the Equal Protection Clause.

Arthur O. Armstrong

Arthur O. Armstrong, Petitioner

VERIFICATION

I, Arthur O. Armstrong, petitioner, do hereby verify that the foregoing statements made within the petition are true and correct and further that I am aware that said statements are subject to penalties of 18 Pa. C.S.A., Section 4904 pertaining to unsworn statements made to authorities.

Arthur O. Armstrong
ARTHUR O. ARMSTRONG, PETITIONER

JURISDICTION

The judgment of the Court of Appeals was rendered on June 2, 1998. This Court's jurisdiction is invoked under 28 U.S.C. §1254(a)

STATEMENT OF THE CASE

On or about August 25, 1996 Arthur O. Armstrong instituted an action in the United States District Court for the Eastern District of Pennsylvania under the Caption, **Arthur O. Armstrong vs. School District of Philadelphia, et al**, C.A. Nos. 96-CV-5740 and 96-CV-5925. (hereinafter referred to as the "1996 Action"). The 1996 Actions sought damages under an assortment of constitutional theories. On or about January 8, 1997 and January 13, 1997, respectively, the Honorable Herbert J. Hutton dismissed petitioner's petition on grounds, amid other things, that said petition was attacking the August 25, 1992 dismissal which was over with due to stipulation,

and that the 1996 Actions were defective in that the statute of limitations for a August 25, 1992 cause of action was August 25, 1994.

On or about September, 1997, Armstrong filed action in the United States District Court for the Eastern District of Pennsylvania under the caption: **Arthur O. Armstrong vs. School District of Philadelphia, et al.**, C.A. Nos. 97-CV-6130 and 97-CV-6178 alleging constitutional violations.

That the 1996 Actions and the 1997 Actions are related. And since the two actions are related, Armstrong refers to the 1997 actions as the 1996 action for the statute of limitations purpose, only. And in doing so, Armstrong's 1997 Actions are treated as if they were filed in September 1996, well within the applicable statute of limitations of January 16, 1997.

REASONS FOR GRANTING THE WRIT

District court dismissed Armstrong's 1997 Actions on the grounds that he was denied reinstatement on January 16, 1995 and the 1997 Action was instituted on August 25, 1997, waited two years and eight months after the expiration of the statute of limitations of January 16, 1997.

When all of the facts of record are read or written in the petition and read literally, for example: On August 25, 1996, Armstrong instituted an action in the United States District Court for the Eastern District of Pennsylvania, C.A. nos. 96-CV-5740 and 96-CV-5925 (facts).

This fact or link was missing in Armstrong's original complaint. And because of this missing link (fact) alone, district court stated that the statute of limitations had expired and dismissed the complaint on those grounds.

For the purpose of statute of limitations purpose, only, the 1997 Actions will be referred to as the 1996 Action.

On January 16, 1995, Mr. Armstrong was denied reinstatement to his original teaching position without due process of law, equal protection of the law and conspiratorial actions by the School District of Philadelphia and the school officials.

Arthur O. Armstrong clearly filed the 1997 Actions within the applicable statute of limitations of January 16, 1997 in that on August 25, 1996 he instituted an action related to the property included in the 1996 Actions.

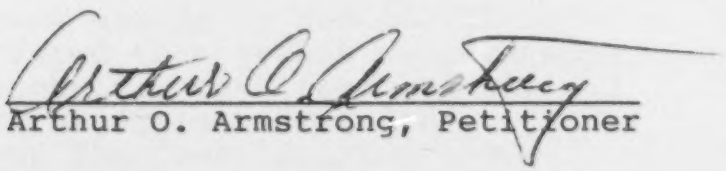
CONCLUSION

The court below, district court, seized on the language of the complaint as if the 1996 Action was not instituted in any way. Was this very court that dismissed the 1996 Action. The appellate court refused to look at Armstrong's supplemental pleading, which cured the defect, on grounds that Armstrong's letter dated April 14, 1998, written to The Third Circuit asking for authorization was construed as notices of appeal and that Mr. Armstrong violated Court's order dated August 14, 1997 in

no. 97-1094 when he sought notices of appeal without asking the Court for permission.

The facts shows that the 1996 Action instituted in September 1996 is related to the 1997 Action, and that the decision below including the action of The Third Circuit are in conflict with the facts of record. It was this "link," the fact of record, that was missing in Armstrong's original complaint. And because, and only because of the omission, district court dismissed the complaint on grounds that the statute of limitations had expired, and The Third Circuit sanctioned it by refusing to review Armstrong's supplemental pleading on grounds that Mr. Armstrong letter of April 14, 1998 was construed as a Motion to leave to file Notices of Appeal in 97-cv-06130 and 97-cv-06178 in light of the Court's order dated August 14, 1997 in No. 97-1094. For these reasons a writ of certiorari should issue to review the judgment and decision below.

Respectfully submitted,



Arthur O. Armstrong, Petitioner

OF COUNSEL:

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APPENDIX A

THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

May 26, 1998

No. 97-1094

ARTHUR O. ARMSTRONG

v.

SCHOOL DISTRICT OF PHILADELPHIA

Present: Cowen, Circuit Judge

Letter dated April 14, 1998 from appellant, when the Court may wish to construe as a Motion to leave to file Notices of Appeal in 97-cv-06130 and 97-cv-06178, in light of the Court's order dated August 1±4, 1997 in no. 97-1094

Sandra D. Turner 597-1031
Case Manager Supv.

O R D E R

The foregoing motion is denied. It is further ordered that Arthur O. Armstrong be, and hereby is, cautioned and advised that should he again violate the condition of the Court's prior order dated August 14, 1997, by filing a Notice of Appeal without prior permission, he may be required to respond to an order requiring him to how why he should not be fined or imprisoned for contempt of court.

By the Court,

"s/Robert Cowen".
Circuit Judge

Dated: JUN - 2 1998

Office of the Clerk
United States Court of Appeals
For the Third Circuit
21400 United States Courthouse
601 Market Street
Philadelphia 19106-1790
Telephone
215-597-2995

July 6, 1998

Arthur O. Armstrong
309 Leland Drive
Greensboro, NC 27455

RE: Armstrong v. School District of Philadelphia
D.C. Civil Action No. 97-cv-6130
D.C. Civil Action No. 97-cv-6178
UNDOCKETED IN THE COURT OF APPEALS
(Related to C.A. No. 97-1094)

Dear Mr. Armstrong:

This will acknowledge receipt on June 22, 1998 of your supplemental pleadings regarding your request for permission to file appeals in the above reference district court proceedings.

By order entered June 2, 1998, this Court denied your letter dated April 14, 1998 which was construed as a motion for leave to file notices of appeal in 97-cv-06130 and 97-cv-06178, in light of the Court's order dated August 14, 1997 in No. 97-1094 which enjoined you from filing without prior authorization of the Court of Appeals any appeal or petition for writ of mandamus/prohibition

related to your discharge as a teacher in the Philadelphia public school system including but not limited to actions against the Philadelphia School District, the Philadelphia Board of Education and its individual members, and the Philadelphia Federation of Teachers. It is further ordered you should be cautioned and advised that should he again violate the conditions of the Court's prior order dated August 14, 1997, by filing a notice of appeal without prior permission, you may be required to respond to an order requiring him to show cause why you should not be fined or imprisoned for contempt of court.

As this Court has already rendered its decision with respect to filing of the appeals, no action will be taken on your supplemental pleadings and they are being returned to you. Any further review of this Court's order would have to be sought in the United States Supreme Court.

Very Truly Yours,
P. DOUGLAS SICK, CLERK

"s/Patricia S. Coleman".

By: Patricia S. Coleman
Legal Coordinator

enclosure

IN THE UNITED STATES DISTRICT
COURT FOR THE EASTERN DISTRICT OF
PENNSYLVANIA

ARTHUR O. ARMSTRONG — CIVIL ACTION

v. — NO. 96-5925

ANN G. WAITERS, ARMITA B. SIMS, ARLENE HOLTZ, ARNOLD S. OBLON, ALBERT M. GENTIL EDWARD WILLIAMS, NORRIS ELDRIDGE, AND ARLENE ROBIN

FILE JAN 13, 1997

FINAL JUDGMENT

AND NOW, this the 8th day of January, 1997, upon consideration of Plaintiff's Motion for Summary Judgment and Defendants' Motions for Summary Judgment, IT IS HEREBY ORDERED that:

(1) Defendants' Motion for Summary Judgment (Docket Nos. 7 & 8) are **GRANTED**;

(2) Defendants' Motions for Summary Judgment (Docket Nos. 2, 15, & 16) are **DENIED**;

(3) Plaintiff's Motions for Summary Judgment (Docket Nos. 3, 11, 11, 19, 20, & 21) are **DENIED**; and

(4) **JUDGMENT** is entered in favor of the DEFENDANTS AGAINST THE PLAINTIFF.

BY THE COURT:

"s/Herbert J. Hutton".
HERBERT J. HUTTON, J.

ENTERED: 1/13/97
CLERK OF COURT

UNITED STATES DISTRICT COURT FOR THE
FOR THE EASTERN DISTRICT OF
PENNSYLVANIA

Arthur O. Armstrong	)	Civil Action
	)	
v.	)	97-6130
	)	97-6178
School District of Philadelphia, et al	)	

O R D E R

AND NOW, this 3rd day of April, 1998, upon consideration of the Defendant's motion for Summary Judgment (Dock. No. 6) and the plaintiff's Response (Dock. No &). IT IS HEREBY ORDERED that the Motion is **GRANTED.**

BY THE COURT:

"s/ Herbert J. Hutton".
HERBERT J. HUTTON, J.

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1. Plaintiff sued the Defendant under 42 U.S.C § 1983 (1994) for its role in an alleged conpriracy to deny him reinstatement to a teaching position from which he was fired in 1992. The conduct in question occurred at a November 18, 1994 arbitration hearing regarding the termination, and on January 16, 1995, when plaintiff received notice that he would not be reinstated. The defendant moves for summary judgment on grounds that the plaintiff failed to bring a timely claim under the applicable two-year statute of limitations.

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P 56(c). The party moving for summary judgment has the initial burden of showing the basis for its motion. Celotex Corp. v. Catrertt, 477 U.S. 317, 323 (1986). Once the movant adequately supports it motion pursuant to Rule 56(c), the burden shifts to the nonmoving party to go beyond the mere pleadings and present evidence through affidavits, deposition, or admissions on file to show that there is a genuine issue for trial. Id. at 324. A genuine issue is one in which the evidence is such that a reasonable jury could return a verdict for the nonmoving party. Anderson v. Liberty Lobby. Inc., 477 U.S. 242, 248 (1986).

ENTERED: 4 - 6 - 98

CLERK OF COURT